ST 99-0172-GIL 05/17/1999 TAX INCREMENT FINANCING

There are no provisions in the Tax Increment Allocation Redevelopment Act for municipal investigations and audits to be conducted by the Department of Revenue. See 65 ILCS 5/11-74.4-8a. (This is a GIL).

May 17, 1999

Dear Xxxxx:

This letter is in response to your letter dated April 27, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

> As a result of numerious telephone calls I have been advised that your office has the responsibility for ensuring the provisions of Illinois Tax Increment Allocation Redevelopment Act are adhered to by municipalities, their elected and appointed officials along with employees.
>
> Therefore, as president of the Board of Directors, representing owners of ORGANIZATION, I am petitioning the Legal Services Office of Illinois Department of Revenue to investigate and initiate an in-depth audit into actions of CITY Corporate Authorities in regards to the designated PROJECT AREA which is governed by Illinois Tax Increment Allocation Redevelopment Act.
>
> Also, to investigate the conduct of CITY Village NAME. Numerous irregularities that are contrary to the Act, by him, have been called to the attention of CITY Corporate Authorities to no avail, these fell upon deaf ears. The Village of CITY Corporate Authorities are so overly convinced of their own importance and overbearingly proud that there is an air of arrogance.
>
> ORGANIZATION has pursued official transcripts, via Illinois Freedom of Information Act., at times this task was difficult. However, we did succeed in collecting and gathering many documents that do support facts listed within the attachments.
>
> Attachment #1 is a map depicting the PROJECT AREA while attachment #2 lists boundaries of the PROJECT AREA along with property addresses and property index numbers. Lines in **BOLD PRINT,** on page III of attachment #2, are properties that Trustee NAME owns and/or has a monetary interest. These sites are located at the bottom of the map, attachment #1, which is at the southern edge of the Redevelopment Project Area on AVENUE. Trustee NAME and his family not only own

these properties they also operate a large successful business, all within the Redevelopment Project Area.

Attachment #3 quotes the Tax Increment Allocation Redevelopment Act of Illinois, 65 ILCS 5/11 - 74.4 - 4, paragraph (n). This paragraph (n) of the Act is quite clear and specific in the requirement that Trustee NAME should **refrain** from any official involvement in regard to the PROJECT AREA (attachment #2), he should **refrain** from voting on **ANY MATTER** pertaining to the PLAN, Project or Area, he should **refrain** from communicating with other Corporate Authority Members concerning **ANY MATTER** pertaining to the PLAN, Project or Area.

Trustee NAME has, on at least fifteen (15) different occasions voted on **MATTERS** pertaining to the PROJECT AREA (attachment #4 page I through V), which are contrary to Illinois Tax Increment Allocation Redevelopment Act, (paragraph (n) of Section 5/11-74.4-4, 64 ILCS).

Attachment #4, pages I through V, identifies some of the irregular actions that CITY Corporate Authorities have been part of since November 20, 1995.

On Tuesday the 24th of February 1998 people from ORGANIZATION attended the regular monthly meeting for CITY Board of Trustees. We presented documented evidence on how Corporate Authorities for the Village of CITY had misled and deceived the people. This is all recorded on pages 11 through 18 of the minutes for this date. In fact, on page #15, section 8.10 of the Redevelopment Agreement the Parties agreed that their Agreement may not be and shall not be recorded. Included in ORGANIZATIONs presentation was the statement to Corporate Authorities that this non-recording was there so they could massage and manipulate the Agreement to their liking.

One (1) item that demonstrates how CITY Corporate Authorities misled, deceived and provided untruths, as they massaged and manipulated the document, is section 3.08 of the Redevelopment Agreement, May 28, 1996, by and between the Village of CITY and PARK, see page IV of attachment #4 for more information.

Now on March 24, 1998, at the regular monthly meeting for CITY Board of Trustees, Trustee NAME2 submitted a motion (which passed) to present an Approval of Agreement between BANK and the Village of CITY for the Ground Lease (2nd agreement) at the southwest corner of AVENUES.

After numerous Freedom of Information requests (over 1-year), seeking a signed and completed copy of the Ground Lease Agreement (2nd agreement) approved by the Trustees on March 24, 1998, ORGANIZATION was finally contacted on March 3, 1999 and informed that the Village now has a copy of this signed and completed Ground Lease Agreement but they were awaiting a document. This proved to be erroneous as they

still did not have a completed and signed agreement from March 24, 1998.

During conversation with the Village of CITY on March 3, 1999 ORGANIZATION was informed that the Village of CITY owns the land where the waterfall is situated on the southwest corner of AVENUES, therefore the additional documents were moot.

Since ORGANIZATION had a copy of the UNSIGNED Ground Lease Agreement (2nd agreement) approved by Village Trustees on March 24, 1998 they were challenged on when this real estate sale transaction took place. It had never been brought up at any open meeting. Corporate Authorities were told by ORGANIZATION that they continue to deceive and misled the people while they massage and manipulate the (initial) Original Redevelopment Agreement as we stated they would do back on February 24, 1998.

On March 9, 1999 ORGANIZATION was shown UNSIGNED copies of a Real Estate Contract, Deed and an unsigned document (3rd agreement) that was suppose to be the current Ground Lease Agreement. This document was similar to the Ground Lease Agreement (2nd agreement) voted upon and passed by the Trustees on March 24, 1998, however there were significant alterations. It became apparent to ORGANIZATION that CITY Corporate Authorities were attempting to replace the unsigned second (2nd) Ground Lease Agreement from March 24, 1998 with this altered one (3rd agreement). If it had not been for ***** having an UNSIGNED copy of this second (2nd) Agreement from March 24, 1998 they might have succeeded without being challenged. ORGANIZATION stated to CITY Corporate Authorities that, at best, this altered document (3rd agreement) which never came before CITY Board of Trustees is an amendment. The Village Attorney assured ORGANIZATION that we would receive two (2) copies of the questionable document (3rd agreement), one (1) unsigned the other signed and that it would probably be presented in the form of an amendment to the Trustees.

On Tuesday the 23rd day of March 1999 at CITY Village Board Meeting a Village Trustee in the form of a motion asked for 'Approval of Amended Agreement (3rd one) Between BANK, ASSOCIATION, and the Village of CITY.'

ORGANIZATION on April 8, 1999 received an unsigned copy of this amended Ground Lease Agreement (3rd one). While there were numerous changes the most important one was in paragraph #19. This paragraph was changed from Remedies of Landlord (2nd agreement) to Future Sale to the Village (3rd agreement) with the Village bearing all costs and expenses associated with the sale of the Property, including but not limited to title insurance costs, survey costs, attorney's fees and transfer declaration costs.

Summarization of the massaging and manipulating by CITY Corporate Authorities in just one section, while misleading and deceiving the people in this Tax Increment Financing Area, follows:

INITIAL AGREEMENT, the developer and the condominium association to be formed would lease land (former administration building adjacent to the private development) from the Village for ninety-nine (99) years at One Dollar ($1.00) per year and be responsible for maintenance and repair of the fountain feature (on private property). In the event the private developer and/or the condominium association to be formed failed or refused to maintain or repair the fountain feature on private land, the Village would have the right to provide the necessary maintenance and repair and charge the developer and/or condominium association to be formed the costs, these costs would become a lien on the property.

SECOND AGREEMENT, On March 24, 1998 Trustee NAME2 presented a separate Approval of Agreement between BANK and the Village of CITY for the Ground Lease at the southwest corner of AVENUES, where the waterfall is located. This ground lease was for a period of 99 years at $1.00 per year. The Landlord would pay the real estate taxes and the Village would maintain and pay the utilities. In addition, the Village agreed to amend its initial agreement. This motion was approved on March 24, 1998. *****, after repeated requests for completed and signed copies of this second agreement, found that it had never been signed. As stated above, we did discover that the Village was claiming they now owned the waterfall property. This is when it became apparent to ORGANIZATION that the Village was planning and claiming this third agreement, on a Ground Lease, was in fact the one approved on March 24, 1998 which was untrue. As stated above, this claim was discredited because ORGANIZATION had a copy of the document (2nd agreement) approved on March 24, 1998 where the Village would lease the property, not purchase it nor own it.

THIRD AGREEMENT, On March 23, 1999 at CITY Village Board Meeting Trustee NAME3 asked for Approval of Amended Agreement between BANK, ASSOCIATION, and the Village of CITY. Section 19 of this third agreement is now titled 'FUTURE SALE' while Section 19 of the previous agreement (2nd agreement) was titled 'REMEDIES OF LANDLORD'. The continuous massaging and manipulating by Corporate Authorities for the Village of CITY in the Redevelopment Project of Area of AVENUES will have removed property from the tax rolls while they misled and deceived the people.

The Village of CITY, in accordance with the third agreement shall have the obligation to purchase the Land and the Premises described in the Agreement (3rd agreement) for the purchase price of $1.00, in the event that Landlord makes such a request to the Village. Landlord shall provide notice to Village of Landlord's intention to sell the property to Village. Village shall, within sixty (60) days of Landlord's

written request to purchase the Premises, close the transaction for the sale of the Premises. Village shall bear all costs and expenses associated with the sale of the Property, including but not limited to title insurance costs, survey costs, attorney's fees and transfer costs.

It is the opinion of Tax Payers at ORGANIZATION that we have justified our position on seeking an investigation and an audit into the activities of CITY Corporate Authorities.

Based upon documented facts it is our belief that Village of CITY Trustee NAME has, on numerous occasions, violated the provisions of the Act within the Redevelopment Project Area of AVENUES.

It has been documented how Corporate Authorities for the Village of CITY have massaged and manipulated the Tax Increment Allocation Redevelopment Project Area of AVENUES. Based upon their record, one can be assured that Corporate Authorities for the Village of CITY have not and/or will not limit their activities of manipulation, massaging, deceiving and misleading to the incidents listed above.

IN CLOSING: The tax paying property owners of ORGANIZATION support Tax Increment Allocation Redevelopment. Illinois Legislators should be commended for their wisdom in creating and enacting this Act, it certainly addresses the need for getting blighted properties back in line with appropriate tax rolls. We at ***** also recognize the importance and need for quality control over municipalities, their elected and appointed officials along with employees. Failure to enforce the provisions enumerated within the Tax Increment Allocation Redevelopment Act would no doubt lead to abuse and subsequent loss of a very important instrument for addressing troubled areas.

ORGANIZATION, as stated in our opening paragraph, is petitioning the Legal Services Office of Illinois Department of Revenue to investigate and initiate an in-depth audit into actions of CITY Corporate Authorities in regards to the designated PROJECT AREA which is governed by Illinois Tax Increment Allocation Redevelopment Act.

Also, to investigate the conduct of CITY Village Trustee NAME. Numerous irregularities that are contrary to the Act, by him, have been called to the attention of CITY Corporate Authorities to no avail, these fell upon deaf ears. The Village of CITY Corporate Authorities are so overly convinced of their own importance and overbearingly proud that there is an air of arrogance.

Subsection (3) of Section 11-74.4-8a of the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-8a, provides, in part, the following:

"(3) Within 30 days after the adoption of the ordinance required by either subsection (1) or subsection (2) of this Section, the municipality shall transmit to the Department of Commerce and Community Affairs and the Department of Revenue the following:

* * *

(e) an opinion of legal counsel that the municipality had complied with the requirements of this Act; and

(f) a certification by the chief executive officer of the municipality that with regard to a redevelopment project area: (1) the municipality has committed all of the municipal tax increment created pursuant to this Act for deposit in the special tax allocation fund, (2) the redevelopment projects described in the redevelopment plan would not be completed without the use of State incremental revenues pursuant to this Act, (3) the municipality will pursue the implementation of the redevelopment plan in an expeditious manner, (4) the incremental revenues created pursuant to this Section will be exclusively utilized for the development of the redevelopment project area, and (5) the increased revenue created pursuant to this Section shall be used exclusively to pay redevelopment project costs as defined in this Act."

In addition, subsection (6) of Section 11-74.4-8a provides, in part, the following:

"(6) Any municipality receiving payments authorized under this Section for any redevelopment project area or area within a State Sales Tax Boundary within the municipality shall submit to the Department of Revenue and to the taxing districts which are sent the notice required by Section 6 of the Act annually within 180 days after the close of each municipal fiscal year the following information for the immediately preceding fiscal year:

* * *

(i) A certified audit report reviewing compliance with this statute performed by an independent public accountant certified and licensed by the authority of the State of Illinois. The financial portion of the audit must be conducted in accordance with Standards for Audits of Governmental Organizations, Programs, Activities, and Functions adopted by the Comptroller General of the United States (1981), as amended. The audit report shall contain a letter from the independent certified public accountant indicating compliance or noncompliance with the requirements of subsection (q) of Section 11-74.4-3. If the audit indicates that expenditures are not in compliance with the law, the Department of Revenue shall withhold State sales and

> utility tax increment payments to the municipality until compliance has been reached, and an amount equal to the ineligible expenditures has been returned to the Special Tax Allocation Fund."

As you can see from the statutory provisions, initially, compliance with the Tax Increment Allocation Redevelopment Act was supported by a municipality with an opinion of legal counsel and a certification by the chief executive officer. See Section 11-74.4-8a(3)(e) and (f). In addition, any municipality receiving payments under Section 11-74.4-8a must annually submit to the Department a certified audit report, which must contain a letter from the independent certified public accountant indicating compliance or noncompliance with the requirements of subsection (q) of Section 11-74.4-3 ("redevelopment project costs"). If the audit indicates that expenditures are not in compliance, the Department will withhold State sales and utility tax increment payments to the municipality until compliance has been reached, and an amount equal to the ineligible expenditures has been returned to the Special Tax Allocation Fund. See Section 11-74.4-8a(6)(i). There are no provisions in the Tax Increment Allocation Redevelopment Act for municipal investigations and audits to be conducted by the Department of Revenue.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Gina Roccaforte
Associate Counsel

GR:msk
Enc.